

Remarks

The Official Action mailed November 24, 2010 has been carefully considered. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

The Office Action recites that claims 12-15, 19, 20, 22, 28 and 29 are pending in the application. Applicant submits that respectfully this is in error. Previous Amendment H and RCE filed on September 20, 2010 include claims 1-5, 9, 12-14, 19, 20, 22, 28 and 29.

Independent claim 1 has been amended to recite “ A multi-layer structure, comprising: a body portion having end portions” and “wherein said multi-layer structure comprises an animal chew toy and is shaped such that said end portions are for chewing.” Support may be found at paragraph [0026] and at paragraph [0010] which recites “[t]he fibers/fabric may also be selectively configured to improve upon the puncture resistance and overall mechanical strength, and be selectively position on the toy at those locations that are more prone to chewing, such as the perimeter or end portions, as the case may be. No new matter has been entered.

Claim 28 has been amended to include the matter of dependent claim 29. Claim 29 has been cancelled. No new matter has been entered.

Claims 1-5, 12-14, 19-20, 22, 28 and 29 are rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement on the grounds that the specification does not provide support for the limitation for a second outer fabric material disposed and *engaged* with at least a portion of a first fabric material. Claim 1 has been amended to delete the reference to “engaged.” No new matter has been entered.

Claim 28 was similarly rejected for lack of support for the ends of the structure being stitched together. Claim 28 previously recited “said structure including ends wherein said ends are stitched or tied together.” Paragraph [0024] of the published U.S. application recites “[a]s a further alternative, the animal toy herein may be a folded, rolled, twisted, etc. structure, rather than a stuffed toy. For example, an animal chew may be formed from high performance fabric rolled to form a cylindrical member. The shape of the animal toy may be maintained by tying the ends of the cylindrical member, or stitching the higher performance fabric so that it retains the shape.” Applicant submits that such stitching, as with tying, would occur at the ends of the member to retain the shape since the high strength fabric makes up the structure of the chew toy

and the structure includes ends made up of such fabric. In any event, claim 28 has been amended to recite “or said fabric material is stitched to retain the shape of the structure.” No new matter has been added and the amendment is believed to be fully supported.

Claims 1-5, 12-14, 19-20, 22, 28 and 29 were rejected under 35 U.S.C. § under 35 U.S.C. § 103(a) as being unpatentable over Denesuk et al. (US 6,196,156) in view of Jordan (US 5,226,384), Bottger et al. (US 6,610,618, Howland (US 2003/0091785) or Johnson (US 696,567). To the extent that the Examiner considers the art of record applicable to the amended claims, it is noted as follows.

At page 5 of the Office Action, upon consideration of Applicant’s previous arguments, the Office Action noted that the feature previously emphasized that the present invention was not a pet bed, as in Jordan, was not persuasive, as the claims only recited the feature of a “pet toy” in the preamble. As can be seen from the above, claim 1 has been amended to recite wherein said multi-layer structure comprises an animal chew toy and is shaped such that said end portions are for chewing. This is now believed to positively distinguish over the references of Denesuk et al as well as Jordan. While granted, both references are directed at pet beds, and it is understood that Jordan also teaches that animals chew on their beds, neither reference teaches the multi-layer structure of claim 1 with the distinction of a body portion and end portions, the use of a fabric material of multiple layers of aramid or linear polyethylene or spun liquid crystal polymer, layers with dissimilar axis of orientation, a second outer fabric having fibers with tensile strengths less than 50,000 psi and/or a modulus of less than 500,000 psi, wherein said multi-layer structure comprises an animal chew toy and is shaped such that said end portions are for chewing. See amended claim 1.

In addition, the end portions for chewing, having high performance fibers, are at least partially covered with a second fabric material of non-high performance fibers. As noted in paragraph [0025] of the present application, the second material may be nylon, polyester, cotton, etc. and used to provide specific characteristics, visual, tactile, etc. Further, it is contemplated that the second fabric material may even be flavored or scented to attract and encourage chewing in the reinforced areas (ends).

At page 5 of the Office Action, it is also suggested that the material of Jordan is “capable” of being played with as a toy. It is submitted that under 35 USC § 103, the analysis for patentability does not rest on the analysis that claimed feature is obvious when a prior art reference is proposed to be modified to provide the missing descriptive matter in a pending claim. In the present situation, Jordan does not teach or suggest that his material may be used for anything more than a bed or that his bed is one that should be considered as an animal chew that is shaped with end portions for chewing. See amended claim 1. MPEP 2143.01(IV) (rejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness).

Botger appears to be directed at penetration resistant materials comprising at least two layers of woven fabric which are cross-plyed at an angle.

Howland appears to be directed at a fabric system comprising a core layer and one or more cover layers, the cover layers disposed at an off-bias orientation to the core layer.

Johnson ‘567 appears to be directed at a laminated combination of multiple layers of woven fabric, the warp threads of each layer running at an angle differing from those of an adjacent layer.

None of these secondary references, taken alone or in combination, make up for the deficiencies of the primary reference of Denesuk et al.

Claims 28 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jordan (US 5,226,384). Jordan is discussed above and is directed at a damage resistant animal bed of a shape to support a domestic animal, comprising a resilient core surrounded and encased by an aramid fabric sheet and a polyester fabric sheet laminated to the aramid sheet and facing the core. The reference is silent regarding a rolled, folded or twisted cylindrical structure of multiple layers of fabric wherein the ends are stitched or tied together. Further, a cylindrical structure would not be a shape that would support an animal.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

AMENDMENT I

Serial Number: 10/656,464

Filing Date: September 5, 2003

Title: High Strength Fiber/Fabric/Film Based Animal Toy

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Docket: TTFH047

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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